IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.331 OF 2000

Union of India. ... Petitioner.

vs.

M/s.Oswal Woollen Mills Ludhina. .... Respondent.

Mr.Sureshkumar with R.C.Master, for Petitioner.

Mr.R.J.Majra i/b. Wadia Gandhy & Co., for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 18th July,2005

P.C.:-

1. By this petition filed under Section 30 of the Arbitration and Conciliation Act,1940, the petitioner challenges the Award passed by the sole Arbitrator. The petitioner-Union of India had claimed Rs.8,83,093/- (Rupees Eight lakhs Eighty three thousand Ninety Three only) towards the risk purchase loss alongwith the interest. That claim has been rejected with the following observations:-

> "It has been argued by the respondents inter alia that they had also participated in the risk purchase tender enquiry

and had given the lowest quotation but their offer was not considered. The risk purchase contract was not offered even to the second lowest offer and therefore, the principles of mitigation of damages were not followed. The claimants have stated that the offer of the respondent was ignored in view of the fact that they had already defaulted twice in respect of the same stores. The supplies were already delayed for 4 years due to the respondent's default. The 2nd lowest offer was ignored as the firm was deregistered from Defence Authority for one year w.e.f. 3.7.88 due to malpractices committed by them while despatch sub standard/un-inspected material to the Defence Consignee. I have gone through the pleadings of both the parties, the documentary evidence adduced and the arguments put forth by the parties and I am of the considered view that the claimants have not proved that they have completed a valid risk purchase contract for the reason that they have not followed the principles of mitigation of damages to the respondents. Therefore, the claim of the claimants U.O.I. Is dis-allowed."

The submission of the petitioner is that the reasons that have been given for rejecting the claim submitted .by the petitioner, are perverse . According to the

learned Counsel for the petitioner, the tender submitted by the respondent could not have been accepted because he himself has committed default and because of his default, the risk purchase was necessitated. The 2nd lowest tender was not accepted because the firm was de-registered for one year with effect from 3.7.1988, and therefore, the 3rd tender was accepted. It is submitted that no fault can be found with non acceptance of the lowest tender and the second tender. It is further submitted that even if it is assumed that the authority could have accepted the tender submitted by the petitioner or tender submitted by the 2nd lowest tenderer, then also the price quoted by the respondent, the lowest tenderer and the 2nd tenderer could have been taken into consideration for working out the amount of damages. However, by no stretch of imagination it can be said that the Arbitrator was justified in rejecting the entire claim, because proper steps have not been taken to mitigate the losses. The learned Counsel also relies on the Judgment in the case "M.Lachia Setty and Sons Ltd. Vs. Coffee Board, Bangalore; (1980) 4 Supreme Court Cases 636".

2. On the other hand on behalf of the respondent, it is submitted that the findings recorded by the learned Arbitrator which are quoted above are essentially findings of the facts, and therefore, this Court cannot exercise its jurisdiction under Section 30 of the Arbitration & Conciliation Act, 1940. Reliance is placed on the judgment of the Supreme Court in the case "Coimbatore District Podu Thozillar Samgam, Vs. Bala Subramania Foundry and others; AIR 1987 Supreme Court 2045." The law in relation to mitigation

of losses has been quoted by the Supreme Court in its judgment in the case "M.Lachia Setty and sons Ltd. Vs. Coffee Board, Bangalore, (1980) 4 Supreme Court Cases 636" referred to above, in paragraph 14, that "The Plaintiff's duty to mitigate loss is that he must take all reasonable steps to mitigate the loss which he has sustained consequent upon the defendant's wrong, and, if the plaintiff fails to take steps to mitigate the loss, he is dis-entitled from claiming damages for any such loss which could have been reasonably avoided by him." Therefore, the aspect of mitigation of loss is relevant only for working out the amount of damages. If the Court finds that the claimant has not taken proper steps to mitigate the loss then from the amount of damages such amount as would have been required to be paid had the steps been taken to mitigate the loss or damages is to be deducted, and the entire claim for damages can never be rejected. For example, if it is a case of the plaintiff that goods were required to be purchased by the plaintiff and thereby he had suffered loss of Rs.100/-, he will have to show that he has taken steps to see that he had purchased the goods at the lowest available price. But if the Court finds that he has not taken the steps, the Court will allow him only such price as would have been required to be paid by him for getting the said goods had he been taken the steps. Therefore, if the Court finds that though the plaintiff has paid Rs.100/- for goods, it was possible for him to get goods for Rs.90/-, the amount that will be required to be paid to the plaintiff would be Rs.90/- and not Rs.100/-. In short, therefore, if the plaintiff fails to take steps to mitigate the damages, his entire claim for damages should not be rejected. It is thus,

obvious that the reasons that have been given by the learned Arbitrator for rejecting the claim of the petitioner entirely is contrary to the settled law of mitigation of damages and therefore, the reasons are perverse and therefore, the Award is liable to be set aside. In the result therefore, the petition succeeds and is allowed. The Award impugned is set aside. The respondent is directed to pay costs of this petition to the petitioner as incurred by the petitioner.